



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 26 1991

REFLY TO THE ATTENTION OF

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michalene Reilly, Environmental Services
Hoosier Energy Rural Electric Cooperative
7398 North State Road
Bloomington, Indiana 47404

RE: Notice and Finding of Violations issued to Hoosier Energy Rural Electric Cooperative, Inc.

Dear Ms. Reilly:

The U. S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (Notice) to Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier). This Notice is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

As discussed in greater detail in the enclosure, EPA has determined that Hoosier has begun actual construction on various physical changes at the Merom Generating Station Units #1 and #2. Such construction violates: the Prevention of Significant Deterioration (PSD) preconstruction provisions of Section 165 of the Act, 42 U.S.C. § 7475; the Indiana State Implementation Plan, as approved by EPA under Section 110(a) of the Act, 42 U.S.C. § 110(a); and Title V of the Act, 42 U.S.C. §§ 7661 *et seq.*

In addition, please be advised that EPA is continuing its investigation of Hoosier's construction activities at both the Merom and Ratts Generating Stations to determine if they have been undertaken in compliance with the Act. Due to the nature and timing of the violations identified in the enclosed Notice, however, EPA has decided to proceed under Section 113(a) with the information it presently has.

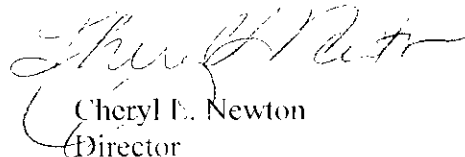
Section 113 of the Act gives us several enforcement options. These include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a civil or judicial action. In addition, Section 167 of the Act, 42 U.S.C. § 7477,

authorizes EPA to take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction or modification of a major source in an attainment area that does not have a required PSD permit.

EPA is offering you an opportunity to confer with us about the violations cited in the Notice. The conference will give you an opportunity to present information on the specific findings of violations, and the steps you will take to bring the facilities into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

You may call may contact Ethan Chatfield at (312) 886-5112 or Sarah Marshall at (312) 886-6797 to request a conference. Because of the nature of these cited violations, you should make your request for a conference no later than five calendar days after you receive this letter, and we should hold any conference within 15 calendar days of your receipt of this letter.

Sincerely yours,



Cheryl E. Newton

Director

Air and Radiation Division

Enclosure

cc: Phil Perry, Branch Chief
Office of Air Quality Compliance Branch
Indiana Department Environmental Management

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
)	
Hoosier Energy Rural Electric)	Proceedings Pursuant
Cooperative, Inc.)	Sections 113(a)(1) and (a)(3) of the
)	Clean Air Act,
)	42 U.S.C. §7413(a)(1) and (a)(3)
)	
)	EPA-5-09-IN-18
)	
)	

NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) for violations of the Clean Air Act (Act), 42 U.S.C. §§ 7401 *et seq.*, at the Merom Generating Station in Sullivan, Indiana (the Station).

This Notice is issued pursuant to Sections 113(a)(1) and (a)(3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (3). The authority to issue this Notice has been delegated to the Regional Administrator of U.S. EPA, Region 5, and redelegated to the Director, Air and Radiation Division, Region 5.

A. STATUTORY AND REGULATORY BACKGROUND

Prevention of Significant Deterioration

1. When the Act was passed in 1970, Congress exempted existing facilities, such as the coal-fired power plants that are the subject of this Notice, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979), “[t]he statutory scheme intends to ‘grandfather’ existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program.” Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. *See* 42 U.S.C. §§ 7470-7492. Pursuant to applicable regulations, if a major stationary source located in an attainment or unclassified area is planning to make a major

modification, then that source must obtain a PSD permit before beginning actual construction. See 40 C.F.R. § 52.21(a)(2)(i). To obtain this permit, the source must, among other things, undergo a technology review and apply the Best Available Control Technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.

3. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, each State is responsible for submitting to EPA for approval an implementation plan which specifies how the State will achieve, maintain, and enforce all primary and secondary National Ambient Air Quality Standards (NAAQS) in the State.

4. Under Section 110(a) of the Act, each State Implementation Plan (SIP) must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. SIPs must include enforceable emission limitations, control measures, and schedules for compliance. Upon EPA's approval of a SIP, the plans become independently enforceable by the federal government, as stated under Section 113(a) of the Act, 42 U.S.C. § 7413(a).

5. On June 19, 1978, EPA promulgated PSD regulations pursuant to Part C of Title I of the Act. 43 *Fed. Reg.* 26403 (June 19, 1978). These regulations, codified at 40 C.F.R. § 52.21, apply to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassified under the Act.

6. The PSD regulations, at 40 C.F.R. § 52.21(a), state that, "[t]he provisions of this section are applicable to any [SIP] which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards."

7. On August 7, 1980, EPA disapproved Indiana's proposed PSD program, and incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Indiana SIP. 45 *Fed. Reg.* 52676, 52741 (August 7, 1980). On September 30, 1980, EPA granted a partial PSD delegation to Indiana. 46 *Fed. Reg.* 9580, 9583 (January 19, 1981). On March 3, 2003, EPA conditionally approved Indiana's PSD regulations at 326 IAC 2-2. 68 *Fed. Reg.* 9892 (effective April 2, 2003). On June 18, 2007, EPA partially approved revisions to 326 IAC 2-2 related to EPA's NSR Reform regulations. 72 *Fed. Reg.* 33395 (effective July 18, 2007).

8. The PSD regulations at 40 C.F.R. § 52.21(a)(2)(iii) provide that "no new major stationary source or major modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements."

9. The PSD regulations define "major modification" as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase" of a regulated pollutant. 40 C.F.R. § 52.21(b)(2)(i).

10. The PSD regulations at 40 C.F.R. § 52.23 state, among other things, that failure to comply with any provision of 40 C.F.R. Part 52, or with an approved regulatory provision of a SIP, shall render the person or governmental entity in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Act.

Title V Requirements

11. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See 57 Fed. Reg.* 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. *See 61 Fed. Reg.* 34228; 40 C.F.R. Part 71.

12. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application.

13. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan, 42 U.S.C. § 7661c(a).

14. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." *See 326 IAC 2-7-2.*

15. 40 C.F.R. § 70.2 defines "applicable requirement" to include "(1) [a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . ."

16. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also 326 IAC 2-7-2.*

17. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. *See also 326 IAC 2-7-2.*

18. 40 C.F.R. § 70.5(b) provides that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date

it filed a complete application but prior to release of a draft permit.” *See also* 326 IAC 2-7-2.

Indiana’s Title V Requirements

19. EPA gave interim approval of the Indiana Title V program on November 14, 1995. *See* 60 *Fed. Reg.* 57188 (effective on December 14, 1995). EPA fully approved the Indiana Title V program on December 4, 2001. *See* 66 *Fed. Reg.* 629469 (effective on November 30, 2001).

20. The Indiana Title V operating permit program at 326 IAC 2-7-3 provides that it unlawful to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

21. The Indiana Title V operating permit program at 326 IAC 2-7-5 provides that each Title V permit must include, among other things, enforceable emission limitations and standards as are necessary to assure compliance with applicable requirements of the Act and the requirements of the applicable SIP.

22. The Indiana Title V operating permit program at 326 IAC 2-7-4 requires that a source submit a complete permit application which, among other things, identifies all applicable requirements, certifies compliance with all applicable requirements.

B. FACTUAL BACKGROUND

23. Hoosier is a corporation authorized to do business in Indiana.

24. Hoosier is a “person,” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

25. At all times relevant to this Notice, Hoosier was the owner and or operator of the Station located in Sullivan, Indiana.

26. The Station is located in Sullivan County, Indiana, which was an area classified as attainment for PM, NO_x, and SO₂ for all time periods relevant to the violations cited herein.

27. The Station is a fossil fuel-fired electric utility steam generating station of more than 250 million British thermal units per hour, and has a potential to emit of greater than 100 tons per year of NO_x, SO₂, CO, and PM. The Station consists of two coal-fired boilers for electric generation, Units #1 and #2, with net generating capacities of 547 MW each. Each boiler has a heat input greater than 250 million Btu per hour. Unit # 2 began operating in 1982 and Unit # 1 began operating in 1983.

28. The Station is a “major stationary source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

29. Starting in 2008, Hoosier began actual construction on various physical changes or changes in the method of operation at Station Units #1 and #2. The physical changes include, but are not limited to, the replacement of: the high temperature superheater outlet header, the radiant and high temperature superheater sections, and high temperature reheater tubes.

C. NOTICE AND FINDING OF VIOLATIONS

Violations of the Prevention of Significant Deterioration Provisions

30. The projects identified in Paragraph 29 caused a significant net emissions increase, as defined in 40 C.F.R. § 52.21 and 326 IAC 2-2, of SO₂, NO_x, and/or PM.

31. The projects identified in Paragraph 29 each constituted a “major modification,” as that term is defined in 40 C.F.R. § 52.21 in 326 IAC 2-2.

32. For the modifications identified in Paragraph 29, the Parties failed to obtain a PSD permit as required by 40 C.F.R. § 52.21 and 326 IAC 2-2.

33. Hoosier violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and the Indiana SIP by constructing major modifications to existing major sources at the Station by failing to, among other things, apply for and obtaining PSD permits and install BACT on the modified facilities.

Violations of the Title V – Permit Program

34. Hoosier failed and or continues to fail to submit timely and complete Title V permit applications for the Station with information pertaining to the modifications identified in Paragraph 29 and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install and operate BACT for NO_x and SO₂ at the plant. Hoosier also failed to supplement or correct its Title V permit applications for the plant, in violation of Sections 502, 503 and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5, 70.6 and 70.7(b); and/or Indiana Title V provisions at IAC 2-7.

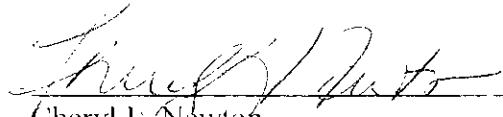
D. ENFORCEMENT

35. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

36. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule promulgated under Title V of the Act, the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

E. EFFECTIVE DATE

Dated: 8/26/09


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

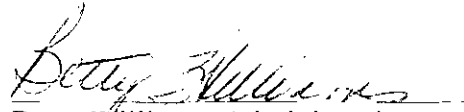
I, Betty Williams, certify that I sent a Notice of Violation and Finding of Violation, No. **EPA-5-09-IN-18**, by Certified Mail, Return Receipt Requested, to:

Michalene Reilly, Environmental Services
Hoosier Energy Rural Electric Cooperative
7398 North State Road
Bloomington, Indiana 47404

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first class mail to:

Phil Perry, Branch Chief
Office of Air Quality Compliance Branch
Indiana Department Environmental Management
100 North Senate Avenue, Room IGCN 1003
Indianapolis, Indiana 46206-2251

On the 27th day of August, 2009


Betty Williams, Administrative
Program Assistant

Certified Mail Receipt Number: 70010320000527160004